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Letter dated 1 July 2000 from the Registrar of the International Court of Justice addressed to the Secretary-General

I have the honour to inform you that, on today's date, the Court rendered its order on the request for the indication of provisional measures submitted on 19 June 2000 by the Democratic Republic of the Congo in the case concerning *Armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda)*.

The text of the order is as follows:

"The Court,

Indicates, pending a decision in the proceedings instituted by the Democratic Republic of the Congo against the Republic of Uganda, the following provisional measures:

(1) Unanimously,

Both Parties must, forthwith, prevent and refrain from any action, in particular any armed action, which might prejudice the rights of the other Party in respect of whatever judgement the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

(2) Unanimously,

Both Parties must, forthwith, take all measures necessary to comply with all of their obligations under international law, in particular those under the United Nations Charter and the Charter of the Organization of African Unity, and with United Nations Security Council resolution 1304 (2000) of 16 June 2000;

(3) Unanimously,

Both Parties must, forthwith, take all measures necessary to ensure full respect within the zone of conflict for fundamental human rights and for the applicable provisions of humanitarian law."

00-52167 (E) 070700 070700

Kindly find enclosed the complete text of this order so that it may be transmitted to the Security Council, in accordance with article 41, paragraph 2, of the Statute of the Court (see annex).

(*Signed*) Philippe **Couvreur**
Registrar of the Court

Annex

[Original: English and French]

INTERNATIONAL COURT OF JUSTICE

YEAR 2000

2000
1 July
General List
No. 116

1 July 2000

CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO (DEMOCRATIC REPUBLIC OF THE CONGO *v.* UGANDA)

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER

Present: President Guillaume; *Judges* Oda, Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; *Registrar* Couvreur.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and to Articles 73, 74 and 75 of the Rules of Court,

Makes the following Order:

1. Whereas, by an Application filed in the Registry of the Court on 23 June 1999, the Democratic Republic of the Congo (hereinafter "the Congo") instituted proceedings against the Republic of Uganda (hereinafter "Uganda") in respect of a dispute concerning "acts of *armed aggression* perpetrated by Uganda on the territory of the Democratic Republic of the Congo, in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity";

2. Whereas in that Application the Congo founds the jurisdiction of the Court on the declarations made by the two States under Article 36, paragraph 2, of the Statute;

3. Whereas in the said Application the Congo states that the "armed aggression by Ugandan troops on Congolese territory has involved *inter alia* violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo", and that "[t]he extent of the invasion of the Democratic Republic of the Congo has been such that it currently involves fighting in seven provinces: Nord-Kivu, Sud-Kivu, Maniema, Orientale Province, Katanga, Equateur and Kasai Oriental"; whereas the Congo recalls "all the efforts undertaken by the Congolese Government with a view to enforcing its right to secure the withdrawal of . . . foreign troops", in particular within the United Nations and the Organization of African Unity; and whereas the Congo observes that "[b]y . . . providing unlimited aid to rebels in the

form of arms and armed troops, in return for the right to exploit the wealth of the Congo for their own benefit, Uganda has defied the international community and created a dangerous precedent", that "the invasion of its territory, which has required - and still requires - inordinate financial efforts, has paralysed the majority of the country's economic sectors, to the detriment of the Congolese people", and that "Uganda has prevented the peaceful settlement of the rebellion - an internal problem of the Democratic Republic of the Congo";

4. Whereas in its Application the Congo also contends that the "armed aggression by Ugandan troops on Congolese territory has involved . . . violations of international humanitarian law and massive human rights violations"; whereas it states more particularly that "the various human rights violations perpetrated by the Ugandan Republic" have been set out in two White Papers prepared by the Ministry of Human Rights, annexed to the Application; and whereas it cites massacres, rapes, abductions and murders, arrests, arbitrary detentions, inhuman and degrading treatment, systematic looting of private and public institutions and seizure of property of the civilian population";

5. Whereas in the Application the Congo refers to "the serious violations committed by Uganda", citing inter alia "the major principles of international law"; and whereas in this connection it refers to violations of Article 2, paragraph 4, of the United Nations Charter, of Articles 3 *et seq.* of the Charter of the Organization of African Unity, of the rules set out in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights of 1966, and of the provisions of the 1949 Geneva Conventions, of the Additional Protocols of 1977, of the New York Convention of 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and of the Montreal Convention of 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation;

6. Whereas the Congo adds that by its Application it "seeks to secure the cessation of the acts of aggression directed against it, which constitute a serious threat to peace and security in central Africa in general and in the Great Lakes region in particular", and that it "also seeks reparation for acts of intentional destruction and looting, and the restitution of national property and resources appropriated for the benefit of Uganda";

7. Whereas the Congo concludes its Application with the following submissions:

> "Consequently, and whilst reserving the right to supplement and amplify the present request in the course of the proceedings, the Democratic Republic of the Congo requests the Court to:
>
> *Adjudge and declare that:*
>
> *(a)* Uganda is guilty of an act of aggression within the meaning of Article 1 of resolution 3314 of the General Assembly of the United Nations of 14 December 1974 and of the jurisprudence of the International Court of Justice, contrary to Article 2, paragraph 4, of the United Nations Charter;
>
> *(b)* further, Uganda is committing repeated violations of the Geneva Conventions of 1949 and their Additional Protocols of 1977, in flagrant disregard of the elementary rules of international humanitarian law in conflict zones, and is also guilty of massive human rights violations in defiance of the most basic customary law;
>
> *(c)* more specifically, by taking forcible possession of the Inga hydroelectric dam, and deliberately and regularly causing massive electrical power cuts, in violation of the

provisions of Article 56 of the Additional Protocol of 1977, Uganda has rendered itself responsible for very heavy losses of life among the 5 million inhabitants of the city of Kinshasa and the surrounding area;

(d) by shooting down, on 9 October 1998 at Kindu, a Boeing 727 the property of Congo Airlines, thereby causing the death of 40 civilians, Uganda has also violated the Convention on International Civil Aviation signed at Chicago on 7 December 1944, the Hague Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft and the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

Consequently, and pursuant to the aforementioned international legal obligations, to adjudge and declare that:

(1) all Ugandan armed forces participating in acts of aggression shall forthwith vacate the territory of the Democratic Republic of the Congo;

(2) Uganda shall secure the immediate and unconditional withdrawal from Congolese territory of its nationals, both natural and legal persons;

(3) the Democratic Republic of the Congo is entitled to compensation from Uganda in respect of all acts of looting, destruction, removal of property and persons and other unlawful acts attributable to Uganda, in respect of which the Democratic Republic of the Congo reserves the right to determine at a later date the precise amount of the damage suffered, in addition to its claim for the restitution of all property removed";

8. Whereas on 23 June 1999 the Registrar notified the Ugandan Government, by facsimile and by letter, of the filing of that Application, and a certified copy of the Application was transmitted to that Government; whereas, in accordance with Article 40, paragraph 3, of the Statute and Article 42 of the Rules of Court, copies of the Application were transmitted to the Members of the United Nations through the Secretary-General, as well as to the other States entitled to appear before the Court; and whereas, by an Order of 21 October 1999, the Court fixed 21 July 2000 and 21 April 2001 as the time-limits for the filing, respectively, of the Memorial of the Congo and the Counter-Memorial of Uganda;

9. Whereas on 19 June 2000 the Congo submitted to the Court a request for the indication of provisional measures, citing Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court; and whereas in that request the Congo, citing Article 74, paragraph 4, of the Rules of Court, also asked the President of the Court to exercise the power conferred upon him by that paragraph to "call upon the Republic of Uganda to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects";

10. Whereas in this request for the indication of provisional measures the Congo states that:

"[s]ince 5 June last, the resumption of fighting between the armed troops of the Republic of Uganda and another foreign army has caused substantial damage to the Democratic Republic of the Congo and to its population";

whereas the Congo points out that "[t]hese actions have been unanimously condemned, in particular by the United Nations Security Council"; whereas it contends that

> "[d]espite promises and declarations of principle, the Republic of Uganda has pursued its policy of aggression, brutal armed attacks and acts of oppression and looting",

and that "[t]his is, moreover, the third Kisangani war, coming after those of August 1999 and May 2000 and having been instigated by the Republic of Uganda . . ."; and whereas the Congo further observes that these acts "represent just one further episode constituting evidence of the military and paramilitary intervention, and of occupation, commenced by the Republic of Uganda in August 1998", and "reflect in particular the conflicts between the foreign forces engaged in organized looting of the natural resources and the assets and equipment of the Democratic Republic of the Congo";

11. Whereas in the request for the indication of provisional measures the Congo argues that "each passing day causes to the Democratic Republic of the Congo and its inhabitants grave and irreparable prejudice", and that it is "urgent that the rights of the Democratic Republic of the Congo be safeguarded in accordance with the Charter of the United Nations and the Statute of the Court";

12. Whereas the Congo adds that its request "is a direct outgrowth of the dispute which it brought" before the Court, and that "[t]here can be no doubt as to the prima facie jurisdiction of the Court";

13. Whereas at the conclusion of its request the Congo asks the Court to indicate as a matter of urgency the following provisional measures:

> "(1) the Government of the Republic of Uganda must order its army to withdraw immediately and completely from Kisangani;
>
> (2) the Government of the Republic of Uganda must order its army to cease forthwith all fighting or military activity on the territory of the Democratic Republic of the Congo and to withdraw immediately and completely from that territory, and must forthwith desist from providing any direct or indirect support to any State, group, organization, movement or individual engaged or preparing to engage in military activities on the territory of the Democratic Republic of the Congo;
>
> (3) the Government of the Republic of Uganda must take all measures in its power to ensure that units, forces or agents which are or could be under its authority, or which enjoy or could enjoy its support, together with organizations or persons which could be under its control, authority or influence, desist forthwith from committing or inciting the commission of war crimes or any other oppressive or unlawful act against all persons on the territory of the Democratic Republic of the Congo;
>
> (4) the Government of the Republic of Uganda must forthwith discontinue any act having the aim or effect of disrupting, interfering with or hampering actions intended to give the population of the occupied zones the benefit of their fundamental human rights, and in particular their rights to health and education;
>
> (5) the Government of the Republic of Uganda must cease forthwith all illegal exploitation of the natural resources of the Democratic Republic of the Congo and all illegal transfer of assets, equipment or persons to its territory;
>
> (6) the Government of the Republic of Uganda must henceforth respect in full the right of the Democratic Republic of the Congo to sovereignty, political independence and territorial

integrity, and the fundamental rights and freedoms of all persons on the territory of the Democratic Republic of the Congo.

The Democratic Republic of the Congo would, at all events, respectfully remind the Court of the powers conferred upon it by Article 41 of its Statute and Article 75 of the Rules of Court, which authorize it in the present case to indicate all such provisional measures as it may deem necessary in order to bring to an end the intolerable situation which continues to obtain in the Democratic Republic of the Congo, and in particular in the Kisangani region";

14. Whereas, immediately upon receiving the text of the request for the indication of provisional measures, the Registrar transmitted a certified copy thereof to the Agent of Uganda, in accordance with Article 73, paragraph 2, of the Rules of Court; and whereas the Registrar also notified the Secretary-General of the United Nations of the filing of the request;

15. Whereas, by letters dated 19 June 2000, the President of the Court addressed the Parties in the following terms:

"Acting in conformity with Article 74, paragraph 4, of the Rules of Court, I hereby draw the attention of both Parties to the need to act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects";

16. Whereas, by letter dated 20 June 2000, the Registrar informed the Parties that the Court had designated 26 June 2000 as the date for the opening of the hearings provided for in Article 74, paragraph 3, of the Rules of Court, at which they would have the opportunity to present their observations on the request for the indication of provisional measures;

17. Whereas, at the public hearings held on 26 and 28 June 2000, oral observations on the request for the indication of provisional measures were presented:

On behalf of the Congo:

by Mr. Michel Lion, *Agent*,
H.E. Mr. She Okitundu,
Mr. Ntumba Luaba,
Mr. Olivier Corten;

On behalf of Uganda:

by H. E. Bart M. Katureebe, *Agent*,
Mr. Ian Brownlie,
Mr. Paul S. Reichler;

* *

18. Whereas at the hearings the Congo essentially reiterated the line of argument developed in its Application and in its request for the indication of provisional measures; whereas it observed that

Article 41 of the Statute confers "a substantial power of discretion on the Court, by providing that it *may* indicate provisional measures" and that "[t]he only condition expressly laid down is that the circumstances should *require* the adoption of such measures"; whereas the Congo asserted that "this was undeniably so in the present case having regard to the extreme gravity of the situation on the ground", which was characterized by the military and paramilitary presence of the Ugandan army on Congolese territory, repeated clashes between the armed forces of Uganda and those of another neighbouring country in the city of Kisangani, the persistence and aggravation of economic rivalry aimed at the seizure of the wealth of the Congo, and the persistence and aggravation of acts of oppression directly affecting the civilian population;

19. Whereas at the hearings the Congo, citing the Court's jurisprudence, argued more particularly that the requirements of urgency and of the risk of irreparable damage, conditions precedent for the indication of provisional measures, were satisfied in the present case; whereas it stated *inter alia* that "each passing day, the territory of the Democratic Republic of the Congo continues to be occupied, its resources and assets are systematically plundered, its inhabitants abducted, injured or killed", that "it is difficult to conceive of damage more 'irreparable' than this", and that "[n]o form of material restitution, compensation or redress can fully make good the deaths, suffering and humiliation undergone daily by the Democratic Republic of the Congo and its inhabitants"; whereas it added that "[w]hen an armed conflict develops and endangers not only the rights and interests of the State but also the lives of its inhabitants, the urgency of provisional measures and the irreparable nature of the damage cannot be in doubt"; and whereas it pointed out that, "in two recent cases, the life of *a single* individual justified the indication of measures intended to avert an irreparable event" and that "[*a*] *fortiori*, measures should be indicated as a matter of urgency in circumstances where . . . hundreds, if not thousands, of persons are being condemned to certain death . . .";

20. Whereas the Congo further observed that "the fact that certain Ugandan high authorities have officially stated that they agree to withdraw their forces from the Kisangani region and that the beginnings of a withdrawal have in fact taken place can . . . in no way call into question" the need for the indication of measures as a matter of urgency, and that "these statements [did not] concern . . . the whole of Congolese territory"; and whereas it pointed out, moreover, that, under the Court's jurisprudence, "the existence of obligations whereby one or other Party agrees to put an immediate end to the acts underlying the request for the indication of provisional measures does not prevent the Court from acceding to that request";

21. Whereas at the hearings the Congo also contended that there was "a sufficient connection between the measures requested and the rights protected"; whereas it stated, on the basis of a comparison of the text for the request of the indication of provisional measures with that of the Application instituting the proceedings, that the "categories of act referred to are similar" and that the "rules of law applicable are similar", arguing more particularly as follows:

> "However, at this preliminary stage of a request for the indication of provisional measures, the Democratic Republic of the Congo is not asking the Court *to condemn* Uganda, to require it to pay compensation by way of reparation, or even to declare - at any event not in the operative part of the order for the indication of provisional measures - that Uganda has violated international law. The withdrawal of troops, or the ending of support for irregular armed groups, are required not as consequences of a finding that Uganda has violated international law, but simply as measures preserving the rights of the Democratic Republic of the Congo until the Court is able to decide the dispute on the merits. Under such conditions, the requests made correspond, *mutatis mutandis*, to those which the Court has indicated in other precedents which are not without relevance to the present case, such as

those in the *Military Activities*, *Frontier Dispute* and *Genocide* cases, or in the *Land and Maritime Boundary* case";

22. Whereas at the hearings the Congo further contended that the Court has prima facie jurisdiction "to entertain the dispute which is the subject-matter of the Application", having regard to the declarations of acceptance of its compulsory jurisdiction deposited by the two Parties; and whereas in this regard it added the following:

> "In the *Military Activities* case, the Court found that it had prima facie jurisdiction precisely because it was dealing with two declarations of acceptance deposited under Article 36, paragraph 2, of its Statute, even though the validity of one of these declarations (that of Nicaragua) had been challenged and the other (that of the United States) contained a reservation which was directly pertinent to the case concerned (*I.C.J. Reports 1984*, p. 181, para. 26). *A fortiori*, the Court must hold itself to have prima facie jurisdiction in the present case, since it is dealing with two declarations whose validity is unquestioned and which contain no reservation which might prevent the Court from exercising its jurisdiction";

23. Whereas at the hearings the Congo stated finally that "[t]here is nothing in the political and diplomatic context of the present case which might prevent the Court from taking the measures which the circumstances require"; whereas it pointed out that "the Security Council has adopted a resolution - resolution 1304 of 16 June 2000 - in which it was demanded that Uganda withdraw its forces not only from Kisangani but from all Congolese territory, without further delay"; whereas it observed that "[t]he withdrawal of Ugandan forces is in substance what the Congo is asking the Court to indicate, not as a political measure with a view to the maintenance of international peace and security, but as a judicial measure"; and whereas, referring to the Court's jurisprudence, it argued that "[i]t is not, however, possible to derive from these parallel powers of the Security Council and of the Court any bar to the exercise by the latter of its jurisdiction"; and whereas, recalling that resolution 1304 "does not concern Uganda alone, but also Rwanda", the Congo pointed out that "although on 23 June 1999 three separate Applications were filed, one of them against Uganda, another against Rwanda, it is only in respect of Uganda that the Democratic Republic of the Congo has considered it appropriate to submit a request for the indication of provisional measures"; whereas it observed that "[t]hese particular circumstances are clearly not such as would prevent the Court from indicating the provisional measures which are the subject-matter of the present proceedings"; and whereas it explained that "[t]he Court [was] not being asked to enjoin a State not party to the proceedings to follow a particular course of conduct", adding the following:

> "The Court is accordingly fully entitled to rule on a request which concerns the State of Uganda specifically and exclusively, even though it is not precluded, should it see fit, from indicating *proprio motu*, on its own initiative, provisional measures directed at other States in the context of other legal disputes, provided that such legal disputes fall within its prima facie jurisdiction";

*

24. Whereas at the hearings Uganda gave the following account of events:

> "The Congolese forces that overthrew President Mobutu in May 1997 were led by Mr. Kabila, the current President. At the outbreak of the fighting, President Mobutu's army abandoned Eastern Congo, leaving no central governmental presence or authority. At the invitation of Mr. Kabila, Ugandan forces entered Eastern Congo to work in collaboration

with his forces to arrest the activities of the anti-Uganda rebels.

> Ugandan forces remained in Eastern Congo after Mr. Kabila became President in May 1997, again at his invitation. The central Government in Kinshasa, which was in the process of creating a new army and a police force, had no capability to exercise authority in this remote region of the country. This arrangement with President Kabila was formalized by written agreement dated 27 April 1998 . . . This agreement expressly recognizes the existence of armed irregulars conducting military activities across the Ugandan/Congolese border, and it provides for joint action by Ugandan and Congolese armed forces in the Democratic Republic of the Congo to stop them";

whereas it added that "Uganda has no territorial interests in the Democratic Republic of the Congo", that "[t]here is a complete political vacuum in Eastern Congo" and that "[t]here is no one else to restrain the anti-Uganda rebels or guarantee the security of Uganda's border"; and whereas at the hearings Uganda stated:

> "At the time of lodging the Application on 23 June 1999, the Government of Uganda and the Government of the Democratic Republic of the Congo, along with other parties to the conflict, were already actively involved in direct negotiations aimed at resolving the conflict and establishing a framework for peace in the region. This was eventually achieved when the Lusaka Agreement was signed . . . Uganda therefore views any moves to seek alternative ways of solving the dispute as an act of bad faith and ultimately as a form of undermining the entire peace process";

whereas it explained that "on its part, [it] has endeavoured to fulfil all its obligations laid down in the Lusaka Agreement", and that "with respect to the events in Kisangani, Uganda has fully complied with the United Nations resolutions in the matter and completely withdrawn its troops from the city"; whereas it stated itself "ready to withdraw all its troops from the territory of the Democratic Republic of the Congo in accordance with the Lusaka Agreement and in accordance with the relevant resolutions of the United Nations Security Council"; and whereas it stressed that any immediate and unilateral withdrawal of its forces, as now being requested by the Congo, would be in fundamental conflict with the Lusaka Agreement and the Kampala Disengagement Agreement, under which the Congo itself agreed that "foreign forces would be withdrawn [from its territory] subject to a precise timetable and following a sequence of defined events";

25. Whereas at the hearings Uganda also asserted that "both the Application and the request for provisional measures are based on preposterous allegations that are not backed by any evidence whatsoever before this Court", and that there was "no amassing of troops on our common border with the Democratic Republic of the Congo or on any border with any of the neighbouring States"; and whereas in consequence it asked the Court to

> "reject the Application for interim measures so that the Parties can concentrate on implementing the resolution of the Security Council and in fulfilling their obligations under the Lusaka Agreement which has gained regional and international acceptance as the most viable means of ending the current conflict in the Democratic Republic of the Congo";

26. Whereas at the hearings Uganda contended that "in the circumstances the request of the Democratic Republic of the Congo is inadmissible, and this for the reason that as a matter of law the Court is prevented from exercising its powers under Article 41 of the Statute"; whereas in this connection it referred to the Orders made by the Court on 14 April 1992 in the cases concerning *Questions of*

Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. *United Kingdom)* and *(Libyan Arab Jamahiriya* v. *United States of America)*; and whereas it argued that "the subject-matter of the request for interim measures is essentially the same as the matters addressed by . . . Security Council resolution [1304] of 16 June [2000]" and that "the principles invoked by the Court in the *Lockerbie* cases of 1992 must . . . apply";

27. Whereas at the hearings Uganda argued in the alternative that

> "even if the Court had a prima facie competence by virtue of Article 41, there are concerns of propriety and judicial prudence which strongly militate against the exercise of the discretion which the Court has in the indication of interim measures";

whereas it pointed out that "the Congolese request has the same subject-matter as the Security Council resolution", that "the Republic of Uganda accepts the resolution which was, in any event, adopted in accordance with Chapter VII of the Charter and is therefore binding", and that, "pursuant to the resolution, the Republic of Uganda has withdrawn all its forces from Kisangani"; and whereas it accordingly concluded that "the request has in practical terms been rendered redundant"; whereas Uganda asserted that "all the relevant States and other interested parties have expressly agreed to the resolution of outstanding issues exclusively by recourse to the modalities established by the Lusaka Agreement and the subsequent peace process", and that "[t]he Lusaka Agreement is the relevant regional public order system and in the text of the Security Council resolution this is effectively recognized"; whereas Uganda contended that "the Court should not grant interim measures because the requesting State has not complied with the normal and necessary standards of procedural fairness"; whereas it stated that "the Court has not yet received the Memorial of the requesting State", that "[t]he Application is, of course, available . . . but the allegations contained in the Application have no relation to the Republic of Uganda or its armed forces", that "the request itself is deficient in substance and is unsupported by any evidence", and that there is a problem of "adequate notice to the respondent State" (request submitted on 19 June 2000, Congo's argument presented on 26 June 2000); whereas it made the point, "on the question of procedural fairness", that the "requesting State has seen fit to single out Uganda in these proceedings", although "[the Lusaka Agreement] was signed by six States, all of which are bound by the provisions for disengagement, not just Uganda", and "the Security Council resolution of 16 June calls on 'all parties' . . . to cease hostilities and makes several references to the Rwandan forces"; and whereas Uganda referred also to the principle of the *Monetary Gold* case";

28. Whereas at the hearings Uganda stressed that "any action . . . by [its] armed forces . . . has been in accordance with the principles of the United Nations Charter"; and whereas it explained, with reference to "activities of armed bands operating from Congolese territory", that "[i]n responding to these threats to its territorial integrity and security, Uganda acted by virtue of Article 51 of the Charter";

29. Whereas at the hearings Uganda argued that there was an "absence of any clear link between the request and the original claim", as the latter "[did] not . . . relate to any conflict between Ugandan and Rwandan armed forces"; and whereas it asserted that "the [Congo's] request [fails to satisfy] the requirement of urgency or the risk of irreparable damage" and that there cannot "be an element of urgency after the Congo has waited for almost a year before making a complaint";

30. Whereas at the hearings Uganda stated that "the Lusaka Agreement is a comprehensive system of public order, signed by the Heads of State of six African States and the leaders of three Congolese rebel groups", and that "it is a binding international agreement that constitutes the governing law between and among the parties to the conflict in the Democratic Republic of the Congo, and between the Democratic

Republic of the Congo and Uganda in particular"; whereas it maintained that "the parties to the Lusaka Agreement, including the Democratic Republic of the Congo and Uganda, continue to express their full support for the Agreement", and that "[t]he Security Council and the Secretary-General have repeatedly declared that [this] Agreement is the only viable process for achieving peace within the Democratic Republic of the Congo and for achieving peace between the Democratic Republic of the Congo and its neighbours"; and whereas Uganda emphasized that "the specific interim measures requested by the Democratic Republic of the Congo directly conflict with the Lusaka Agreement, and with the Security Council resolutions - including resolution 1304 . . . - calling for implementation of the Agreement";

31. Whereas, in response to the arguments put forward by Uganda, the Congo contended *inter alia*, with regard to the requirement of urgency, that "at all events, the fact that a request may not have been submitted cannot support a claim of lack of urgency", and pointed out that "the three attacks on Kinsangani, one of them just weeks ago, have once again demonstrated the dangers and irreparable risks to which its inhabitants are exposed as a result of the continuing presence of foreign armies on Congolese territory"; whereas, as regards one of Uganda's arguments deriving from Security Council resolution 1304, the Congo stated that "no incompatibility can be shown between the text of the resolution and the text of the requests"; whereas, as to Uganda's argument on the "absence of Rwanda", the Congo observed, citing the Court's case-law, that an applicant State is "entitled to isolate procedurally a specific relationship with another State"; and whereas, in response to Uganda's argument on the Lusaka Agreement, the Congo observed that this Agreement "can in no circumstances negate [the rules on the prohibition of the use of force and on the prohibition of aggression and of occupation]", and that it "merely prescribes the procedures for a withdrawal but cannot in any event compromise the requirement of withdrawal";

*

* *

32. Whereas the two Parties have each made a declaration recognizing the jurisdiction of the Court in accordance with Article 36, paragraph 2, of the Statute; whereas the declaration of Uganda was deposited with the Secretary-General of the United Nations on 3 October 1963 and that of the Congo (formerly Zaire) on 8 February 1989; whereas neither of the two declarations includes any reservation; and whereas Uganda stated in its declaration that it was made on the sole condition of reciprocity;

33. Whereas on a request for the indication of provisional measures the Court need not, before deciding whether or not to indicate such measures, finally satisfy itself that it has jurisdiction on the merits of the case, yet it may not indicate them unless the provisions invoked by the Applicant appear, prima facie, to afford a basis on which the jurisdiction of the Court might be founded;

34. Whereas the Court considers that the declarations made by the Parties in accordance with Article 36, paragraph 2, of the Statute constitute a prima facie basis upon which its jurisdiction in the present case might be founded;

* *

35. Whereas, in its request for the indication of provisional measures, the Congo refers to resolution 1304 (2000), adopted by the United Nations Security Council on 16 June 2000; whereas that resolution was adopted by the Security Council acting under Chapter VII of the Charter of the United Nations; and whereas, in the said resolution, the Security Council:

"1. *Calls on* all parties to cease hostilities throughout the territory of the Democratic Republic of the Congo and to fulfil their obligations under the Ceasefire Agreement and the relevant provisions of the 8 April 2000 Kampala disengagement plan;

2. *Reiterates* its unreserved condemnation of the fighting between Ugandan and Rwandan forces in Kisangani in violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo, and *demands* that these forces and those allied to them desist from further fighting;

3. *Demands* that Ugandan and Rwandan forces as well as forces of the Congolese armed opposition and other armed groups immediately and completely withdraw from Kisangani, and *calls on* all parties to the Ceasefire Agreement to respect the demilitarization of the city and its environs;

4. *Further demands*:

(a) that Uganda and Rwanda, which have violated the sovereignty and territorial integrity of the Democratic Republic of the Congo, withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay, in conformity with the timetable of the Ceasefire Agreement and the 8 April 2000 Kampala disengagement plan;

(b) that each phase of withdrawal completed by Ugandan and Rwandan forces be reciprocated by the other parties in conformity with the same timetable;

(c) that all other foreign military presence and activity, direct and indirect, in the territory of the Democratic Republic of the Congo be brought to an end in conformity with the provisions of the Ceasefire Agreement;

5. In this context *demands* that all parties abstain from any offensive action during the process of disengagement and of withdrawal of foreign forces;

6. *Requests* the Secretary-General to keep under review arrangements for deployment of the personnel of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), as authorized and in conditions defined by resolution 1291 (2000), to monitor the cessation of hostilities, disengagement of forces and withdrawal of foreign forces as described in paragraphs 1 to 5 above and to assist in the planning of these tasks, and *requests also* the Secretary-General to recommend any adjustment that may become necessary in this regard;

7. *Calls on* all parties, in complying with paragraphs 1 to 5 above, to cooperate with the efforts of MONUC to monitor the cessation of hostilities, disengagement of forces and withdrawal of foreign forces;

8. *Demands* that the parties to the Ceasefire Agreement cooperate with the deployment of MONUC to the areas of operations deemed necessary by the Special Representative of the Secretary-General, including by lifting restrictions on the freedom of movement of MONUC personnel and by ensuring their security;

9. *Calls on* all the Congolese Parties to engage fully in the National Dialogue process as provided for in the Ceasefire Agreement, and *calls in particular on* the Government of the

Democratic Republic of the Congo to reaffirm its full commitment to the National Dialogue, to honour its obligations in this respect and to cooperate with the Facilitator designated with the assistance of the OAU and to allow for the full participation of political opposition and civil society groups in the dialogue;

10. *Demands* that all parties cease all forms of assistance and cooperation with the armed groups referred to in Annex A, Chapter 9.1 of the Ceasefire Agreement;

11. *Welcomes* efforts made by the parties to engage in a dialogue on the question of disarmament, demobilization, resettlement and reintegration of members of all armed groups referred to in Annex A, Chapter 9.1 of the Ceasefire Agreement, and *urges* the parties, in particular the Government of the Democratic Republic of the Congo and the Government of Rwanda, to continue these efforts in full cooperation;

12. *Demands* that all parties comply in particular with the provisions of Annex A, Chapter 12 of the Ceasefire Agreement relating to the normalization of the security situation along the borders of the Democratic Republic of the Congo with its neighbours;

13. *Condemns* all massacres and other atrocities carried out in the territory of the Democratic Republic of the Congo, and *urges* that an international investigation into all such events be carried out with a view to bringing to justice those responsible;

14. *Expresses* the view that the Governments of Uganda and Rwanda should make reparations for the loss of life and the property damage they have inflicted on the civilian population in Kisangani, and *requests* the Secretary-General to submit an assessment of the damage as a basis for such reparations;

15. *Calls on* all the parties to the conflict in the Democratic Republic of the Congo to protect human rights and respect international humanitarian law;

16. *Calls also on* all parties to ensure the safe and unhindered access of relief personnel to all those in need, and *recalls* that the parties must also provide guarantees for the safety, security and freedom of movement for United Nations and associated humanitarian relief personnel;

17. *Further calls on* all parties to cooperate with the International Committee of the Red Cross to enable it to carry out its mandate as well as the tasks entrusted to it under the Ceasefire Agreement;

18. *Reaffirms* the importance of holding, at the appropriate time, an international conference on peace, security, democracy and development in the Great Lakes region under the auspices of the United Nations and of the OAU, with the participation of all the Governments of the region and all others concerned;

19. *Expresses* its readiness to consider possible measures which could be imposed in accordance with its responsibility under the Charter of the United Nations in the case of failure by parties to comply fully with this resolution;

20. *Decides* to remain actively seized of the matter";

36. Whereas the Court notes Uganda's argument that the Congo's request for the indication of provisional measures concerns essentially the same issues as this resolution, that the said request is accordingly inadmissible, and that the request is, moreover, moot, since Uganda fully accepts the resolution in question and is complying with it; whereas Security Council resolution 1304 (2000), and the measures taken in its implementation, do not preclude the Court from acting in accordance with its Statute and with the Rules of Court; whereas in particular, as the Court has already had occasion to observe,

> "while there is in the Charter
>
> > 'a provision for a clear demarcation of functions between the General Assembly and the Security Council, in respect of any dispute or situation, that the former should not make any recommendation with regard to that dispute or situation unless the Security Council so requires, there is no similar provision anywhere in the Charter with respect to the Security Council and the Court. The Council has functions of a political nature
> >
> > assigned to it, whereas the Court exercises purely judicial functions. Both organs can therefore perform their separate but complementary functions with respect to the same events' (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, pp. 434-435, para. 95);"
> > (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993,* p. 19, para. 33);

and whereas in the present case the Security Council has taken no decision which would prima facie preclude the rights claimed by the Congo from "be[ing] regarded as appropriate for protection by the indication of provisional measures" (*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Provisional Measures, Order of 14 April 1992,* p. 15, para. 40);

37. Whereas the Court has taken note of the Lusaka Agreement, to which Security Council resolution 1304 (2000) refers a number of times; whereas that Agreement constitutes an international agreement binding upon the Parties; whereas it does not, however, preclude the Court from acting in accordance with its Statute and with the Rules of Court;

38. Whereas, furthermore, the Court is not precluded from indicating provisional measures in a case merely because a State which has simultaneously brought a number of similar cases before the Court seeks such measures in only one of them; and whereas, pursuant to Article 75, paragraph 1, of its Rules, the Court may in any event decide to examine *proprio motu* whether the circumstances of the case require the indication of provisional measures;

* *

39. Whereas the power of the Court to indicate provisional measures under Article 41 of the Statute of the Court has as its object to preserve the respective rights of the parties pending the decision of the Court, and presupposes that irreparable prejudice shall not be caused to rights which are the subject of dispute in judicial proceedings; whereas it follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by the Court to belong either to the Applicant

or to the Respondent; and whereas such measures are only justified if there is urgency;

40. Whereas the rights which, according to the Congo's Application, are the subject of the dispute are essentially its rights to sovereignty and territorial integrity and to the integrity of its assets and natural resources, and its rights to respect for the rules of international humanitarian law and for the instruments relating to the protection of human rights; and whereas it is upon the rights thus claimed that the Court must focus its attention in its consideration of this request for the indication of provisional measures;

41. Whereas the Court is in possession of information on the facts of this case, and in particular that contained in the above-mentioned Security Council resolution 1304 (2000) of 16 June 2000; whereas, however, the Court's duty at this stage of the proceedings is limited to examining whether the circumstances brought to its attention require the indication of provisional measures; and whereas it cannot make definitive findings of fact or of imputability, since the right of each of the Parties to submit arguments in respect of the merits must remain unaffected by the Court's decision;

42. Whereas it is not disputed that at this date Ugandan forces are present on the territory of the Congo, that fighting has taken place on that territory between those forces and the forces of a neighbouring State, that the fighting has caused a large number of civilian casualties in addition to substantial material damage, and that the humanitarian situation remains of profound concern; and whereas it is also not disputed that grave and repeated violations of human rights and international humanitarian law, including massacres and other atrocities, have been committed on the territory of the Democratic Republic of the Congo;

43. Whereas, in the circumstances, the Court is of the opinion that persons, assets and resources present on the territory of the Congo, particularly in the area of conflict, remain extremely vulnerable, and that there is a serious risk that the rights at issue in this case, as noted in paragraph 40 above, may suffer irreparable prejudice; whereas the present urgency in the situation cannot be in any way affected by the fact that the Congo did not present its request for provisional measures at the same time as its Application; and whereas the Court consequently considers that provisional measures must be indicated as a matter of urgency in order to protect those rights; whereas Article 75, paragraph 2, of the Rules of Court empowers the Court to indicate measures that are in whole or in part other than those requested;

44. Whereas, independently of requests for the indication of provisional measures submitted by the parties to preserve specific rights, the Court possesses by virtue of Article 41 of the Statute the power to indicate provisional measures with a view to preventing the aggravation or extension of the dispute whenever it considers that circumstances so require (*Land and Maritime Boundary between Cameroon and Nigeria, Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996*, pp. 22-23, para. 41); whereas, having regard to the information at its disposal, and in particular the fact that the Security Council has determined, in its resolution 1304 (2000), that the situation in the Congo "continues to constitute a threat to international peace and security in the region", the Court is of the opinion that there exists a serious risk of events occurring which might aggravate or extend the dispute or make it more difficult to resolve;

* *

45. Whereas, in view of the foregoing considerations, the Court finds that the circumstances require it to indicate provisional measures, as provided for in Article 41 of the Statute of the Court;

46. Whereas a decision in the present proceedings in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case, or any questions relating to the merits themselves, and

leaves unaffected the right of the Governments of the Congo and of Uganda to submit arguments in respect of those questions;

*

* *

47. For these reasons,

The Court,

Indicates, pending a decision in the proceedings instituted by the Democratic Republic of the Congo against the Republic of Uganda, the following provisional measures:

(1) Unanimously,

Both Parties must, forthwith, prevent and refrain from any action, and in particular any armed action, which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

(2) Unanimously,

Both Parties must, forthwith, take all measures necessary to comply with all of their obligations under international law, in particular those under the United Nations Charter and the Charter of the Organization of African Unity, and with United Nations Security Council resolution 1304 (2000) of 16 June 2000;

(3) Unanimously,

Both Parties must, forthwith, take all measures necessary to ensure full respect within the zone of conflict for fundamental human rights and for the applicable provisions of humanitarian law.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this first day of July two thousand, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Democratic Republic of the Congo and the Government of Uganda, respectively.

(Signed) Gilbert Guillaume,
President.

(Signed) Philippe Couvreur,
Registrar.

Judges ODA and KOROMA append declarations to the Order of the Court.

(Initialled) G. G.

(Initialled) Ph. C.

Declaration of Judge Oda

1. I voted in favour of the Court's Order only because I could not but agree that, in order to restore peace in the region, the measures indicated by the Court in this Order should be taken by the Parties - measures on which few would ever disagree.

2. I believe, however, that the Court is *not* in a position at this time to grant provisional measures for the reason that the present case, brought unilaterally by the Democratic Republic of the Congo against Uganda on 23 June 1999, is - and has from the outset been - *inadmissible*.

*

3. The Applicant claims that the *disputes* are related to "acts of armed aggression perpetrated by Uganda on the territory of the Democratic Republic of the Congo". Various relevant resolutions adopted by the Security Council in the past few years appear to indicate that the "armed aggression" might be the result of political turmoil in the Democratic Republic of the Congo, caused by fighting between rival factions and government forces and involvement in that internal friction by the armed forces of foreign countries, including Uganda.

4. The mere allegation by the Applicant that there has been "armed aggression" perpetrated by the Respondent in its territory does not mean that *legal disputes* exist between these Parties concerning (i) the alleged breach of the Applicant's rights by the Respondent or the alleged failure of the Respondent to observe its international legal obligations to the Applicant, and (ii) the denial by the Respondent of the Applicant's allegations.

The Applicant in this case did not, in its Application, show us that both Parties had attempted to identify the *legal disputes* existing between them and to resolve those disputes by negotiation. Without such a mutual effort by the Parties, a mere allegation of armed aggression cannot be deemed suitable for judicial settlement by the Court.

The issues arising from unstable conditions in a disintegrating State cannot constitute legal disputes before this Court, whose main function is to deal with the rights and obligations of States. Unilateral referral to the Court of acts of armed aggression in which a State is directly involved does not fall within the purview of Article 36, paragraph 2, of the Court's Statute.

5. I do not need to point out that the United Nations Charter provides for the settlement, through the Security Council, of disputes raising issues of armed aggression and threats to international peace, of the type seen in the present case. In fact, the Security Council, as well as the Secretary-General acting on its instructions, has made every effort over the past several years to ease the situation and restore peace in the region.

*

6. I contend that the Application in the present case is *inadmissible*. I am aware that the issue of admissibility may well be dealt with at the merits stage of the case. I believe, however, that the present case lacks, even prima facie, the element of admissibility. The jurisprudence of the Court shows that judgments rendered by the Court and provisional measures indicated by it in advance of the merits phase have not necessarily been complied with by the respondent States or by the parties.

If the Court agrees to be seised of the application or request for the indication of provisional measures of one State in such circumstances, then the repeated disregard of the judgments or orders of the Court by the parties will inevitably impair the dignity of the Court and raise doubt as to the judicial role to be played by the Court in the international community.

7. It is a principle that the Court's jurisdiction is founded on the consent of the States parties to the dispute and that declarations under the optional clause accepting the Court's compulsory jurisdiction may be made only if they arise from the bona fide will of the State. One can hardly believe that the present case stems from any *legal dispute* between two parties appearing willingly and in good faith before the Court.

If the Court admits applications or grants requests for provisional measures on the condition that an application is admissible, I am afraid that States that have accepted the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Court's Statute will be inclined to withdraw their declarations, and fewer States will accede to the compromissory clauses of multilateral treaties.

*

8. Furthermore, in the present case, I note that a State appearing before the Court is not represented by a person holding high office in the Government acting as Agent, but by a private lawyer from another, highly developed, country. This has rarely been the case in the history of the Court and reinforces my feeling that a question arises as to whether the case is brought to the Court in the interest of the State involved or for some other reason. I would like to repeat here a passage from an article I published a few months ago:

> "I personally wonder, in the light of the increasing number of unilateral applications, whether the offhand or casual unilateral referral of cases by some States (which would simply appear to be instigated by ambitious private lawyers in certain developed countries), without the Government of the State concerned first exhausting diplomatic channels, is really consistent with the purpose of the International Court of Justice as the principal judicial organ of the United Nations. I see what may be termed an abuse of the right to institute proceedings before the Court. Past experience appears to indicate that irregular procedures of this nature will not produce any meaningful results in the judiciary." (Oda, S., "The Compulsory Jurisdiction of the International Court of Justice: A Myth? - A Statistical Analysis of Contentious Cases", *The International and Comparative Law Quarterly*, Vol. 49 (2000), p. 265.)

(Signed) Shigeru Oda.

Declaration of Judge Koroma

By this Order, the Court recognized on the basis of information available to it and took judicial notice that, since the recent outbreak of hostilities in Kisangani resulting in a serious breach of the peace, the Congolese civilian population has suffered irreparable harm and injury with hundreds killed and thousands injured; that national assets, including monuments, have also been destroyed; that for these reasons unless measures are urgently taken to safeguard the rights of the Congolese population and to preserve human life, they may be further imperilled. The matter is therefore, without question, one of urgency and exceptional gravity. The Court, in the case concerning the *United States Diplomatic and Consular Staff in Tehran* (*Provisional Measures, Order of 15 December 1979, I.C.J. Reports 1979*, p. 20, para. 42) and in that concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria)* (*Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996 (I)*, p. 23, para. 42), held that death and injury to persons are to be considered irreparable damage. The Court has made an analogous determination in this case. The legal criteria for granting the Order were, accordingly, all satisfied.

While the Order recognizes that Security Council resolution 1304 (2000) of 16 June 2000 calls on *all* parties to cease hostilities, the Court, as a court of law and given its position as the principal judicial organ of the United Nations, juridically assessed the issues and has cast its Order in accordance with judicial norms. The Order must, therefore, be seen in the light of Article 59 of the Statute of the Court and Article 94 of the United Nations Charter. The Order enjoins both Parties to take all measures necessary to respect fundamental human rights and the applicable provisions of humanitarian law, and to prevent their armed forces, or other groups under their authority or control, from taking any action which might prejudice the rights of the other Party in respect of any judgment the Court may render in the case, or which might aggravate or extend the dispute.

Thus, in endeavouring to preserve the peace as well as preserve the rights of the Parties, the Order is to be seen as part of the process of the judicial settlement of the dispute. It is, accordingly, of special significance for the Parties, who should refrain from any action which might aggravate or extend the dispute, thereby preventing further harm to the population in the zone of conflict.

The Order in no way prejudges the facts or the merits of the case.

(Signed) Abdul G. Koroma.